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09/966,413

Filing Date

09/28/2001

First Named Inventor

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Art Unit

3749

Examiner Name

Josiah C. Cocks

Attorney Docket Number

LUM 180

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No.	: 09/966,413
Applicant	: George G. Pappas
Filed	: 09/28/2001
Tech. Center/Art Unit	: 3749
Examiner	: Josiah C. Cocks
Attorney File No.	: LUM 180
Customer No.	: 002555
Confirmation Number	: 4358
For	: Flame-Resistant Sheet With Candle Wick Support

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**APPLICANT'S REPLY BRIEF**

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## ARGUMENT

### Grounds of Rejection

Section (10) of the Examiner's Answer appears to be a replication of the rejection in the office action immediately preceding this appeal. This Applicant's Reply Brief does not respond to that section of the Examiner's Answer because Applicant's initial brief responded to that rejection.

### Claim 1

The examiner's argument seems to be that a prior art worker would be motivated to modify the structures disclosed in the Pappas reference by a desire to create an equivalent or alternative means to the structures disclosed in Pappas. On page 7, first full paragraph, the examiner describes the legal principles guiding a consideration of the issue of obviousness. Applicant entirely agrees with the examiner's description of the law. Applicant would emphasize the part that says "the test is what the combined teaching of the references would have suggested..." (emphasis added).

The examiner does not point to any suggestion in the only reference. However, the examiner urges that there would be a motivation to get an equivalent. No reason for doing so is given.

The examiner's proposed modification of the Pappas reference requires all three of three steps. The first is to remove the pedestal of the Fig. 13 embodiment from its integral attachment to the plate 114. The second step is to substitute in the Fig. 13 embodiment the longer wick support of Fig. 9 for the wick support shown in Fig. 13 (or alternatively, combine the plate from

which the pedestal has been removed with the embodiment of Fig. 9). The third step is to attach the wick support to that plate.

Even if the resulting modified structure urged as obvious by the examiner were equivalent, there is no teaching or suggestion to make all these modifications as urged by the examiner. Why would a person be motivated to make modifications to get only an equivalent? People do not modify things just to get a modification or an equivalent. People don't change things just to get an equivalent when the solution is already described because nothing is accomplished. The reason to modify things is to get some new feature or difference or advantage. The examiner suggests no such advantage to be gained from these modifications. Applicant respectfully submits that getting merely an equivalent is not a valid motivation either from the prior art or from a skilled worker's head. The only motivation for making the modification urged as obvious by the examiner is what is taught by applicant's application in this appeal.

Furthermore, the number of steps required to make the modifications urged by the examiner suggest that they would not have been obvious. Additionally and importantly, the advantages to be gained from applicant's claimed structure would certainly not be obvious (and the examiner did not assert they would have been). Applicant's structural combination provides new safety-enhancing advantages described in applicant's principal brief and application. Neither the modifications urged by the examiner nor the resulting increase in safety would have been obvious from Pappas. Applicant's invention is therefore worthy of a patent bearing the claims on appeal.

Finally, the examiner makes an argument that begins on page 8, the paragraph near the top beginning with "Figure 9" and extends to the middle of page 9 of the examiner's brief. That

argument may have more to do with the credibility of applicant's attorney than the merits of this appeal, but should be addressed by applicant. In that argument the examiner concludes: "Thus, contrary to applicant's assertion, attaching a wick support to a plate does not 'teach away' from the embodiment of Figure 9 but is *expressly contemplated* in this embodiment." (emphasis by the examiner).

The examiner is in error in interpreting the text quoted by the examiner from the Pappas reference as expressly contemplating the attachment of the wick support to a plate. That is not what it says. Applicant asks the Board to consider first the literal meaning of the quoted text and then consider its meaning in the greater context of the patent application.

The quoted sentence begins "The sustainer 82 is mounted at the candle floor,". That is only a statement of the position of the sustainer (i.e. the wick support). It does not say anything about attachment of the wick support. The sentence continues: "which for the candle 80 is the surface upon which the bottom of the wax fuel of the candle 80 is resting." This says that the wax fuel (not the sustainer/wick support) is resting on the "surface". The next and last quoted sentence says: "This surface can be an attached plate...". Consequently, the "surface" that can be attached is the "surface upon which the bottom of the wax fuel is resting". These sentences, taken literally, mean that the bottom of the wax fuel can be attached to a plate. They do not say that the bottom of the sustainer/wick support is also attached to the plate.

Looking at the quoted sentences in the context of the patent, first it is apparent from Figs. 9 and 10 and their accompanying description that no plate is needed with the longer wick support (i.e. when the pedestal is unnecessary) for the purposes of the invention described in the Pappas reference. It is believed by applicant's attorney that a reader of the Pappas reference would know that some people drip molten wax onto a support surface and attempt to attach the candle to the

surface by quickly placing the wax of the candle on the molten wax in the hope that the molten wax drippings will be hot enough to melt into the surface of the candle wax and create a bond between the support surface and the candle. The quoted second sentence, that refers to attachment, is simply a patent attorney's way of listing surfaces the candle can be set upon and using the word "attached" to make it clear that, if you attach a plate to the bottom of the candle, you don't avoid the invention of the Pappas reference. But this only teaches attaching the candle by its wax to attain a wax bond. It is not a teaching that the wick support should also be attached to a support surface. Taken as a whole, the Pappas reference teaches that, no plate is needed where the wick support is long enough.

In the Pappas reference, the only attachment of the wick holder to anything is (1) attachment to the bottom of a container and (2) if a pedestal is used. The reason is that, in those two cases, molten wax fuel is poured around the wick support and its turbulence would move the wick support off center. The fact is that, when a freestanding candle is made without a container or pedestal, the wick support is temporarily attached to the bottom of the cylindrical mold for the same reason. Molten wax turbulence would move it away from the center. It is detached from the bottom of the mold when the candle is removed. But from the Pappas reference, or the general knowledge of the skilled worker, there is no reason to attach the wick support to a plate that is attached to the bottom of the candle. Only the appealed application discloses that concept and the reason for doing it.

#### Claim 4

Applicant's dependent claim 4 is not claiming simply the use of adhesive to bond the applicant's flame resistant sheet to the bottom of a candle. The claim is directed to an adhesive

backing on the flame resistant sheet so that sheet can be directly applied in one step to bond to both the bottom of the candle and the wick support that is molded in place. That facilitates manufacture because there is no separate step of applying an adhesive to the candle bottom or the sheet and holding them together. The adhesive backing on the sheet is also not suggested in the prior art and therefore should also be allowed. The examiner recognizes the adhesive backing limitation in his first sentence directed to claim 4 (examiner's brief, page 9), but then argues only that it would be obvious to use adhesive. The examiner does not address the adhesive backing on the sheet. Even if it is obvious to use adhesive, it is not obvious to use a flame resistant sheet with an adhesive backing.

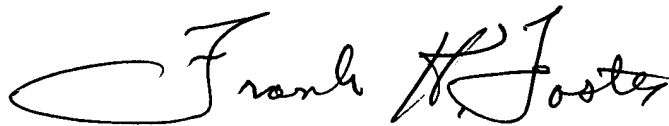
### CONCLUSION

Therefore, applicant respectfully submits that the modification of the Pappas reference as urged by the examiner would not have been obvious to the person of ordinary skill in the art from the prior art and therefore the examiner should be reversed and the claims allowed.

The Commissioner is authorized to charge Deposit Account No. 13-3393 for any insufficient fees under 37 CFR §§ 1.16 or 1.17, or credit any overpayment of fees.

Respectfully submitted,

9/7/05  
Date of Signature



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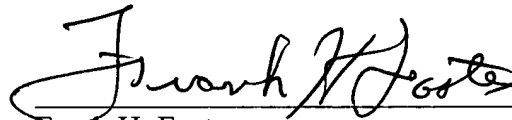
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